

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

OPENTV, INC.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 12-1733 (GMS)
)	
NETFLIX, INC.,)	REDACTED - PUBLIC VERSION
)	
Defendant.)	

**DECLARATION OF CAROLE PAYNE IN SUPPORT OF
DEFENDANT NETFLIX, INC.'S MOTION TO TRANSFER**

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Originally Filed: June 3, 2013

Redacted Version Filed: June 10, 2013

I, Carole Payne, hereby declare as follows:

1. I am currently Manager, Business and Legal Affairs at Netflix, Inc. The factual assertions made herein are made of my personal knowledge and, if called upon to do so, I could and would testify competently thereto.

2. Netflix was founded in California. Netflix has always had its headquarters in the Northern District of California. When founded in 1997, Netflix had its headquarters in Scotts Valley, California. Approximately two years later, Netflix moved its headquarters to nearby Los Gatos, California, where its headquarters remain today. Netflix also has an office in Beverly Hills, California.

3. Netflix makes its development and marketing decisions at its headquarters in Los Gatos, California. The Los Gatos office houses Netflix's management, engineering, finance, marketing, and product development staff. Accordingly, the Netflix employees most knowledgeable about Netflix's services for allowing subscribers to watch content streamed over the Internet to user terminals, including the features that appear to be accused of infringement in this case, are located in Los Gatos, California. Likewise, the Netflix employees most knowledgeable about Netflix's marketing and finances are located in Los Gatos, California.

4. OpenTV's complaint accuses "the [Content Delivery Network ('CDN')] messaging used in its on-demand video streaming service" of infringing U.S. Patent No. 7,490,346. (Complaint, Dkt. 1, ¶ 58.) Netflix currently contracts with third parties to supply CDN services. On information and belief, none of those third party companies nor their operations are located in Delaware.

5. Netflix is also currently developing and implementing its own CDN called OpenConnect. The development, design, and implementation of the OpenConnect take place entirely at Netflix's headquarters in Los Gatos, California. The Netflix employee most

knowledgeable about Netflix's Open Connect CDN is Ken Florance. Mr. Florance is currently Vice President, Content Delivery, and works at and resides near Netflix headquarters in Los Gatos, California.

6. OpenTV's complaint accuses Netflix's "recommendation system for its on-demand video streaming service" of infringing U.S. Patent No. 7,949,722. (Complaint, Dkt. 1, ¶ 65.) The development, design, and implementation of the algorithms used by the Netflix recommendation system take place entirely at Netflix's headquarters in Los Gatos, California. Netflix employee Jon Sanders is Director of Search & Recommendation Systems, and is the current person most knowledgeable about what appear to be the accused features of the recommendation system. Mr. Sanders works at and resides near Netflix headquarters in Los Gatos, California.

7. OpenTV's complaint accuses Netflix's "fast forward and fast rewind trick play functionality" of infringing U.S. Patent Nos. 6,018,768, 7,409,437 and 8,107,786. (Complaint, Dkt. 1, ¶¶ 68, 71, 74.) The development, design, and implementation of the Netflix trick play functionality that is implemented by Netflix take place entirely at Netflix's headquarters in Los Gatos, California. Netflix employee Anthony Park is Director of Engineering, and is the current person most knowledgeable about what appear to be the accused features of the trick play functionality. Mr. Park works at and resides near Netflix headquarters in Los Gatos, California.

8. However, at least some of the functionality apparently accused of infringement was and is developed by third parties. [REDACTED]

[REDACTED]

[REDACTED]

9. OpenTV's complaint accuses Netflix's "'Next Episode' and 'More Episodes' navigation functionality as part of its user interface" of infringing U.S. Patent No. 6,233,736. (Complaint, Dkt. 1, ¶ 77.) The development, design, and implementation of this functionality take place entirely at Netflix's headquarters in Los Gatos, California. Mr. Park is also the person most knowledgeable about what appear to be the accused features of the "Next Episode" and "More Episodes" functionality. As mentioned above, Mr. Park works at and resides near Netflix headquarters in Los Gatos, California.

10. OpenTV's complaint accuses Netflix's "use of directives in connection with providing its on-demand video streaming service" of infringing U.S. Patent No. 7,055,169. (Complaint, Dkt. 1, ¶ 62.) Although it is not clear what functionality could be accused by this allegation, to the extent it refers to the display of the various Netflix user interfaces, if anything, all of the development, design, and implementation of the Netflix user interfaces take place entirely at Netflix's headquarters in Los Gatos, California.

11. Other individuals most knowledgeable about Netflix's finance and marketing operations are also located in Los Gatos, California. For example, Netflix's Vice President of Consumer Insights, Vice President of Marketing – North American, and Vice President of Corporate Planning and Analysis work out of and reside near Netflix's headquarters in Los Gatos, California.

12. Netflix's headquarters in Los Gatos, California is also where Netflix stores its records regarding its streaming content design, structure and operation, including source code, as well as financials.

13. Netflix's source code and technical documents are located in Los Gatos, California.

14. Netflix has no offices in Delaware, maintains no records in Delaware, owns no property in Delaware and has no streaming content operations in Delaware.

15. If this case proceeds in the District of Delaware, the travel time and costs for Netflix's witnesses traveling from the San Francisco Bay Area will be far more burdensome than if the case were to proceed in the Northern District of California. Numerous Netflix employee-witnesses would be forced to incur major travel expenses and would suffer from lost productivity due to the extended travel required.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed in Los Gatos, California, on May 30, 2013.



CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2013, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

I further certify that I caused copies of the foregoing document to be served on June 10, 2013, upon the following in the manner indicated:

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